

DOCKET FILE COPY ORIGINAL ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,) MM Docket No. 97-182
Placement and Construction of Broadcast)
Station Transmission Facilities)

To: The Commission

COMMENTS OF A.H. BELO CORPORATION

A.H. Belo Corporation ("Belo"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rule Making in the above captioned proceeding. FCC 97-296, released August 19, 1997 ("NPRM"). Belo shares the Commission's belief that the prompt initiation of new digital television ("DTV") service is a paramount national public interest objective. As the Commission acknowledges in the NPRM, this public goal could be thwarted if broadcasters were unable to secure on a timely basis the approvals that will be necessary to construct or modify all of the antenna towers that will be necessary to roll out this new technology. Accordingly, Belo supports the Commission's efforts to carefully review requirements that could unreasonably interfere with the development of DTV service. As necessary, the Commission should assume exclusive jurisdiction over matters unique to its area of expertise or which are already considered in its public interest analysis of particular proposals.

In the Fifth Report and Order in MM Docket No. 87-268, FCC 97-116 (April 22, 1997) ("Fifth Report and Order"), the Commission adopted an accelerated schedule for construction of

No. of Copies rec'd
List ABCDE

014

DTV transmission facilities. DTV is an exciting new technology that holds great promise. "It allows delivery of brilliant, high-definition, multiple digital-quality programs, and ancillary supplementary services such as data transfer."¹

As the Commission recognizes, rapid roll-out of DTV is necessary to (1) guarantee viewers a free, universally available digital programming service; (2) promote DTV's competitive strength internationally, with resulting benefits to the American economy; and (3) remove disincentives that may prevent individual broadcasters from broadcasting digital transmissions quickly.² Belo agrees that these important goals should not be frustrated by an extraneous level of review. To achieve these objectives, the Commission has specified an "aggressive but reasonable" construction schedule, especially in the larger markets.³ Affiliates of the top four networks in the ten largest markets must commence digital broadcasts by May 1, 1999, and the major network affiliates in markets 11 - 30 must commence service by November 1, 1999.⁴

Of course, every television broadcaster must install a new digital transmission plant. For many stations, this will require extensive upgrades of existing towers or wholesale construction of new towers. In some cases, layers of state and local review could make siting and constructing a new tower a long, expensive ordeal. This scrutiny could add months, and possibly

¹ Fifth Report and Order at ¶ 3.

² NPRM at ¶ 10 (citing Fifth Report and Order at ¶ 80-83).

³ NPRM at ¶ 11 (citing Fifth Report and Order at ¶ 2, 7).

⁴ The remaining commercial stations must construct DTV facilities by May 1, 2002. All noncommercial stations must construct DTV facilities by May 1, 2003. NPRM at ¶ 2 (citing Fifth Report and Order at ¶ 76).

years, to the process of converting a broadcast station to DTV, unless it is restricted to matters of uniquely local concern.

For these reasons, Belo supports the efforts of the Commission to implement procedures that will expedite the roll-out of DTV, and urges the agency to adopt rules that will assist television broadcasters in the process of implementing DTV. Thus, broadcasters should not be subjected to protracted state and local scrutiny on issues that are specifically within the Commission's expertise or have otherwise been determined to comply with federal requirements, such as: (1) radio frequency ("RF") standards; (2) electromagnetic interference; (3) public interest or service obligations; and (4) tower lighting and marking requirements. Action by the Commission to assist broadcasters in this area would be fully consistent with the Commission's authority and the policy of promoting the prompt delivery of new communications services.

For example, as the Commission noted in the NPRM,

it is well settled that the Communications Act of 1934, as amended ("Communications Act"), comprehensively provides for regulation of radio frequency interference and that the FCC has exclusive jurisdiction to resolve such questions. With regard to interference affecting home consumer equipment in particular, Congress plainly stated in the 1982 amendments to the Communications Act that it intended federal regulation to completely occupy the field to the exclusion of local and state government. Thus, a rule preempting state and local zoning regulations based on electromagnetic interference would simply codify the existing state of the law.⁵

In addition, the Commission noted that it has the authority to preempt state or local law when it prevents the performance of the full objectives of Congress or where it is necessary to achieve

⁵ NPRM at ¶ 12.

the Commission's purposes within the scope of its delegated authority.⁶ Belo agrees that this authority includes the preemption of restrictions based on environmental effects of RF emissions and tower lighting, painting, and marking.⁷ Accordingly, Belo submits that the Commission could facilitate the prompt initiation of DTV service by ensuring that construction proposals that have already been deemed to comply with the Commission's requirements and to serve the public interest are not needlessly subjected to further layers of review on the same issues.

For the foregoing reasons, Belo urges the Commission to adopt a rule that permits the agency to exercise exclusive jurisdiction with respect to matters unique to its area of expertise in order to ensure the expeditious implementation of DTV service.

Respectfully submitted,

A.H. BELO CORPORATION

By: 

Richard E. Wiley

James R. Bayes

Todd M. Stansbury

of

WILEY, REIN & FIELDING

1776 K Street, N.W.

Washington, D.C. 20006

(202) 429-7000

Its Attorneys

October 29, 1997

⁶ Id.

⁷ Id.